

New Declaration  
2/18/97

# 9

REISSUE DECLARATION AND POWER OF ATTORNEY

FRANK CALANDRA, JR., JOHN C. STANKUS AND EUGENE H. STEWART declare:

We are each citizens of the United States of America and residents of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania, whose post office address is 110 Haverford Road, Pittsburgh, Pennsylvania 15238; Canonsburg, County of Washington, Commonwealth of Pennsylvania, whose post office address is 425 Ironwood Drive, Canonsburg, Pennsylvania 15317; and Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania, whose post office address is 1612 King James Drive, Pittsburgh, Pennsylvania 15237, respectively.

We believe ourselves to be the original, first and joint inventors of the subject matter which is described in the specification, shown in the drawings and claimed in the claims filed May 14, 1993, bearing Application Serial No. 08/061,841 (hereinafter "the patent application") now Letters Patent No. 5,292,209, granted on March 8, 1994 and in the reissue application filed March 7, 1996 bearing Serial No. 08/612,128 and for which invention we solicit a reissue patent.

We have reviewed and understand the contents of the reissue application including the drawings, specification and claims.

We do not know and do not believe that the same was ever known or used in the United States before our invention thereof.

We acknowledge our duty to disclose information of which we are aware which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §1.56.

We verily believe U.S. Patent No. 5,292,209 (hereinafter "the patent") to be wholly or partly inoperative or invalid by reason of claiming less than we had a right to claim and by reason of typographical errors in the specification and drawings. These errors arose without any deceptive intent on the part of the Applicants. We solicit a reissue patent to correct these errors.

Specifically, claims 1 to 20 claim less than we had a right to claim because they do not claim the full scope of the invention. The specification contains several typographical errors, and Figs. 1 and 2 lack reference numeral 84. These insufficiencies in the claims, specification and drawings are as follows:

1) Claim 1 is defective because it is overly narrow. In particular, claim 1 specifies that the bearing plate includes "a circular embossed area extending outwardly from said plate outer surface and defining a recessed portion having a bottom wall with a central opening therethrough" (column 10, line 67-column 11, line 2) and includes "a longitudinal embossed area

extending outwardly from said opposite sides of said circular embossed area of said bearing plate into overlying relation with said means for reinforcing said elongated member" (column 11, lines 10-14). However, the bearing plate need not include the circular embossment 68 and longitudinal embossment 69 shown in Figs. 1-3 to be operative, thus claim 1 to an apparatus having a bearing plate with those features is overly narrow.

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How arose  
VO!  
When arose  
The defect in claim 1 arose in March-May 1994, during preparation of the patent application by the counsel (Stanley J. Price, Jr., Esq.) at the time for the assignee of the entire interest in the patent (Jennmar Corporation). Said prior counsel did not file any claim in the patent application on behalf of Jennmar Corporation to an apparatus for supporting a rock formation which does not require a circular embossment or a longitudinal embossment.

When discovered  
How discov.  
The defect in claim 1 was discovered by Jennmar Corporation's new counsel (The Webb Law Firm) retained in December 1994. Said new patent counsel subsequently began a review of all of Jennmar Corporation's intellectual property, including the patent (hereinafter "the intellectual property review"). On or about May 15, 1995, Mr. Stankus requested said new patent counsel to review the claims of the patent to determine their scope and content. Said new patent counsel, which did not prepare or prosecute the patent application, subsequently reviewed the patent and prosecution history in detail and verbally reported the scope of the patent claims. During a meeting of October 25, 1995 between said new patent counsel and Mr. Stankus, Mr. Stankus stated that he believed claim 1 claimed less than we had a right to claim because the bearing plate need not include a circular embossment or a longitudinal embossment to be operative, thus claim 1 to an apparatus having a bearing plate with those features is overly narrow. Mr. Stankus thereafter communicated his awareness to co-inventors Messrs. Frank Calandra, Jr. and Eugene H. Stewart.

New claims 21-23 have been added to the reissue application to encompass the inventive support apparatus having a bearing plate which does not require a circular embossment or a longitudinal embossment thereon.

2) Claim 17 is defective because it is overly narrow. In particular, claim 17 specifies that the method include the step of "positioning a recessed portion of the bearing plate within the opening of the channel member so that an opening in the bearing plate is aligned with the opening in the channel member" (column 13, line 32-column 14, line 2) and the step of "restraining lateral movement of the bearing plate on the channel member" (column 14, lines 5 and 6). However, the method need not include the step of positioning a recessed portion of the bearing plate within the opening of the channel member, nor the step of restraining lateral movement of the bearing plate on the channel member to be operational, thus, claim 17 to a method having those steps is overly narrow.

The defect in claim 17 arose in March-May 1994 during preparation of the patent application by said prior counsel. Said prior counsel did not file any claim in the patent application on behalf of Jennmar Corporation to a method for supporting a rock formation which does not require a step of positioning a recessed portion of a bearing plate within an opening of a channel member nor require a step of restraining lateral movement of the bearing plate on the channel member.

The defect in claim 17 was discovered by said new patent counsel during the intellectual property review. During the meeting of October 25, 1995 between said new patent counsel and Mr. Stankus, Mr. Stankus stated that he believed claim 17 claimed less than we had a right to claim because the method of supporting a rock formation need not include a step of positioning a recessed portion of the bearing plate within an opening of the channel member nor include a step of restraining lateral movement of the bearing plate on the channel member to be operational, thus, claim 17 to a method requiring those steps is overly narrow. Mr. Stankus thereafter communicated his awareness to co-inventors Messrs. Frank Calandra, Jr. and Eugene H. Stewart.

New claim 24 has been added to the reissue application to encompass the inventive method of supporting a rock formation which does not require a step of positioning a recessed portion of the bearing plate within an opening of the channel member nor require a step of restraining lateral movement of the bearing plate on the channel member. Instead of those two steps present in claim 17, new claim 24 requires a step of "straddling portions of the longitudinal embossment by leg portions of the bearing plate" and a step of "positioning a central portion of the bearing plate within the opening of the channel member so that an opening in the bearing plate is aligned with the opening of the channel member."

3) The specification is defective because certain terms used in the new claims 21-24 do not appear in the patent specification, namely, "central portion", "legs" secured to opposite sides of the central portion and "rib receiving openings", "sides" of the bearing plate embossment, "first end" of each leg and "second end" of each leg.

These defects in the specification arose in March-May 1994 during preparation of the patent application by Stanley J. Price, Jr., Esq. Although each of these structures appears in the drawings, they were not named or referenced in the specification because they were not part of any claim language.

The defects in the specification were discovered by The Webb Law Firm in early 1996 during preparation of the reissue application. Although the language of new claims 21-24

is supported by structures shown in the drawings, additional language describing the "central portion", "legs" secured to opposite sides of the central portion and "rib receiving openings", "sides" of the bearing plate embossment, "first end" of each leg and "second end" of each leg (along with reference numerals therefor) was determined by The Webb Law Firm to be appropriate. Language regarding the "central portion 73" is added to the specification at column 6, line 39 and appears on page 6 of the reissue application. Language regarding the "legs 51" is added to the specification at column 9, lines 24 and 37 and appears on pages 9 and 10 of the reissue application. Language regarding the "sides 100 and 102", and "rib receiving openings 104 and 106" is added to the specification at column 9, lines 24 and 37 and appears on page 9 of the reissue application. Language regarding the "first end 108" and "second end 110" is added to the specification at column 9, line 61 and appears on page 10 of the reissue application. Each of these additions to the specification describe elements of new claims 21-24 already appearing in Figs. 1-3.

4) Figs. 1-4 are defective because reference numerals 51, 73, 100, 102, 104, 106, 108 and 110 and lead lines thereto for the structural language added to the specification are missing.

The defects in Figs. 1-4 regarding reference numerals 51, 73, 100, 102, 104, 106, 108 and 110 and lead lines thereto arose in March-May 1994 during prosecution of the patent application by Stanley J. Price, Jr., Esq. Although each of the structures appear in the drawings, they were not labeled with reference numerals and lead lines thereto because they were not part of any claim language nor present in the specification.

The defects in Figs. 1-4 regarding reference numerals 51, 73, 100, 102, 104, 106, 108 and 110 and lead lines thereto were discovered by The Webb Law Firm in early 1996 during preparation of the reissue application. Because the language of new claims 21-24 based on structures appearing in Figs. 1-4 was added to the specification along with reference numerals therefor, reference numerals 51, 73, 100, 102, 104, 106, 108 and 110 and lead lines thereto were added to Figs. 1-4 in the reissue application.

5) The specification is also defective due to typographical errors, namely, "With" instead of "with" at column 2, line 9; "6" instead of "69" at column 6, line 38; "89" instead of "88" at column 8, lines 43 and 46; "overly" instead of "overlay" at column 8, line 50; and "26 and 28" instead of "56 and 58" at column 8, lines 58, 60 and 62 and at column 9, lines 8 and 21.

The typographical defects in the specification arose in March-May 1994 during preparation of the patent application by Stanley J. Price, Jr., Esq.

These typographical defects in the specification were discovered by The Webb Law Firm in early 1996 during preparation of the reissue application.

6) Figs. 1 and 2 are also defective due to the absence of reference numeral 84 and a lead line thereto.

The defect in Figs. 1 and 2 in connection with reference numeral 84 inadvertently arose in March-May 1994 during preparation of the patent application by Stanley J. Price, Jr., Esq.

The defect in Figs. 1 and 2 was discovered by The Webb Law Firm in early 1996 during preparation of the reissue application.

We declare further that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

We hereby appoint Russell D. Orkin, Registration No. 25,363; William H. Webb, Registration No. 13,467; William H. Logsdon, Registration No. 22,132; David C. Hanson, Registration No. 23,024; Richard L. Byrne, Registration No. 28,498; Frederick B. Ziesenheim, Registration No. 19,438; Kent E. Baldauf, Registration No. 25,826; Barbara E. Johnson, Registration No. 31,198; Paul M. Reznick, Registration No. 33,059; John W. McIlvaine, Registration No. 34,219; Michael I. Shamos, Registration No. 30,424; Blynn L. Shideler, Registration No. 35,034; Julie W. Meder, Registration No. 36,216; Lester N. Fortney, Registration No. 38,141; Randall A. Notzen, Registration No. 36,882; Jesse A. Hirshman, Registration No. 40,016; James G. Porcelli, Registration No. 33,757; and Kent E. Baldauf, Jr., Registration No. 36,082, of Pittsburgh, Pennsylvania, whose post office address is 700 Koppers Building, 436 Seventh Avenue, Pittsburgh, Pennsylvania 15219-1818, Telephone No. 412-471-8815, as our attorneys with full power of substitution and revocation, to prosecute this application to registration, to transact all business in the Patent and Trademark Office connected therewith, to amend the specification, to appeal in case of rejection, as they may deem advisable, to receive the patent when granted and generally to do all matters and things needful in the premises, as fully and to all intents and purposes as we could do.

All correspondence and telephone calls should be addressed to Russell D. Orkin.

I hereby subscribe my name to the foregoing

specification and claims, declaration and power of attorney this  
\_\_\_\_\_ day of June 24, 1997.

Inventor

Frank Calandra, Jr.

I hereby subscribe my name to the foregoing  
specification and claims, declaration and power of attorney this  
24 day of JUNE, 1997.

Inventor

John C. Stankus

I hereby subscribe my name to the foregoing  
specification and claims, declaration and power of attorney this  
7 day of July, 1997.

Inventor

Eugene H. Stewart

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